

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application, and for the personal interview conducted on April 18, 2006. The application has been carefully reviewed in light of the Office action and interview, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

Claims 1 and 12-24 remain in this application. Claim 24 has been withdrawn as the result of an earlier restriction requirement, and applicant retains the right to present that claim in a divisional application. New claims 25-28 have been added.

Claims 1, and 12-23 were rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. The claims have been amended to remove the cited language, making the rejections moot.

Claims 1, and 12-23 were rejected under 35 U.S.C. §112, second paragraph, for being indefinite. The claims have been amended to remove the cited language, making the rejections moot.

Claims 1, 12-15, 17 19, and 20-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Moser *et al.* (WO 85/00509) in view of Engebretson *et al.* (U.S. 4,548,082) in further view of Delisle *et al.* (U.S. 3,809,811). Claim 14 was rejected as above, in further view of Geiger (U.S. 4,807,208). Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Basseas (6,674,867), as modified by Delisle. For the following reasons, the rejection is respectfully traversed.

Claims 1, 20, and 22 have been amended to recite an apparatus or method for fitting a hearing device where the apparatus comprises “a storage device for storing a plurality of assessment data and previously experienced audio track data” where a control signal is provided based on “said stored plurality of assessment data and stored previously experienced audio track data”. None of Moser, Geiger, Delisle, or Basseas teach any such database or control signal. In particular, it should be noted that the amended claims require that the next audio track that is **automatically** selected be based on information stored about previous assessments and previous audio tracks that were experienced by the user. In contrast, Moser teaches that the user directly (manually) select the next audio track, and Engebretson fails to teach any dependency of a subsequent track of speech samples on any assessment results, but

instead merely teaches that the next speech sample is chosen based on a desire to continue, not on a user assessment (see col. 21, starting at line 60). Nowhere does the prior art suggest that a plurality of assessment data is utilized, i.e., none teaches that the next track is chosen based on a plurality of preceding assessment results.

Similar, claim 23 recites a method for fitting a hearing device including the step of “**automatically** selecting, in dependency of test signals experienced and the respective said appraisings, a subsequent audio test signal” where “said computing unit computes a control signal to said audio control output in dependency upon said stored assessment data and stored previously experienced audio track data”, and thus the arguments provided above also apply to the method claims.

Accordingly, the claims are patentable over the references, because the combination fails to teach the invention (i.e., none of the references teach using an assessment based on listening to test signals representing common daily experiences to automatically select a next test signal also representing common daily experiences).

Finally, the Examiner has failed to support the rejections for obviousness because the Examiner has failed to provide legally sufficient motivation for combining the references, and thus the obviousness rejections are improper.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 31949.

Respectfully submitted,
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